



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

3/23/2021

Subject:

Acceptance, Re: Binding Development Plan with Thomas R. and Rachel Darnell (District 5)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept, and the Chairman sign, the Binding Development Plan.

Summary Explanation and Background:

A BDP (Binding Development Plan) is a voluntary agreement presented by the property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of the Board's approval of the zoning request. Following staff and legal review, the BDP is presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

On February 4, 2021, the Board approved a change of zoning classification from SEU to AU, with a BDP stipulating that the owner agrees that no agritourism activity, as defined in Section 570.86, Florida Statutes, no agricultural packing, processing, or sales of any agricultural commodities located on the property shall be permitted.

Clerk to the Board Instructions:

Upon recordation, please return two certified copies of the BDP to Planning and Development.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

March 24, 2021

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.3, Binding Development Plan with Thomas R. and Rachel Darnell

The Board of County Commissioners, in regular session on March 23, 2021, executed Binding Development Plan with Thomas R. and Rachel Darnell. Said Plan was recorded in BK/PG 9064/533. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 20Z00037

On motion by Commissioner Lober, seconded by Commissioner Zonka, the following resolution was adopted by a unanimous vote:

WHEREAS, Thomas R. and Rachel Darnell have requested a change of zoning classification from SEU (Suburban Estate Use Residential) to AU (Agricultural Residential), on property described as Tax Parcel 758, as recorded in ORB 8030, Page 0326, of the Public Records of Brevard County, Florida. **Section 09, Township 27, Range 36.** (5.45 acres) Located on the south side of Lake Washington Rd., approx. 550 ft. west of McGraw Ave. (5685 Lake Washington Rd., Melbourne); and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) prohibiting agritourism and agricultural-related packing, processing and sales of commodities raised on the premises; and

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from SEU to AU be approved with a BDP, recorded on March 25, 2021, in ORB 9064, Pages 533 - 540, prohibiting agritourism and agricultural-related packing, processing and sales of commodities raised on the premises. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of March 25, 2021.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on March 25, 2021.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – January 11, 2021
County Commission Zoning Hearing - February 4, 2021

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said**

development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.

Prepared by:
The Moore Law Group, PLLC
895 Barton Blvd., Suite B
Rockledge, Florida 32955

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 23 day of March, 2021 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and THOMAS R. AND RACHEL DARNELL (hereinafter referred to as "Owner").

RECITALS

WHEREAS, Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Owner has requested the AU zoning classification pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for rezoning of the Property, Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development and rezoning of the Property.

NOW, THEREFORE, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

3. The Owner and County stipulate and agree that upon successful granting and approval of the requested zoning change to AU by the County, the Owner agrees that no agrotourism activity, as defined in Section 570.86, Florida Statutes, no agricultural packing, processing or sales of any agricultural commodities located on the Property shall be permitted.

4. The Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Owner's agreement to meet additional standards or restrictions on the Property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.

5. Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.

6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on

2/4/21

. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

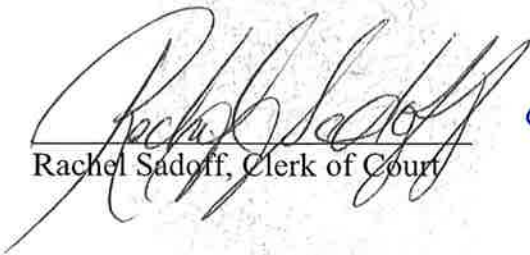
7. Violation of this Agreement shall constitute a violation of the zoning classification and this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.

8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 5 above.

9. Severability clause. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:


Rachel Sadoff, Clerk of Court

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

2725 Judge Fran Jamieson Way
Viera, Florida 32940


Rita Pritchett, Chair

As approved by the Board on 3/23/2021

(Please note: You must have two witnesses and a notary for each signature required.
The notary may serve as one witness.)

WITNESSES:

[Signature]
WITNESS SIGNATURE
Rayne M. Egan
WITNESS PRINTED NAME

THOMAS R. DARNELL
[Signature]
Address: 5685 Lake Washington Road
Melbourne, Florida 32934

Catherine O. Shiflett
WITNESS SIGNATURE
Catherine O. Shiflett
WITNESS PRINTED NAME

STATE OF Florida §
COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of x
physical presence or ___ online notarization, this 3rd day of March, 2021, by
THOMAS R. DARNELL, who is personally known to me or who has produced
 as identification.

SEAL

Catherine O. Shiflett
NOTARY PUBLIC
MY COMMISSION EXPIRES: 6/1/2024

(Name typed, printed or stamped)

RACHEL DARNELL:

Jayne M. Egler
WITNESS SIGNATURE

Jayne M. Egler
WITNESS PRINTED NAME

Rachel H. Darnell
Address: 5685 Lake Washington Road
Melbourne, Florida 32934

Catherine O. Shiflett
WITNESS SIGNATURE

Catherine O. Shiflett
WITNESS PRINTED NAME

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of x
physical presence or ___ online notarization, this 3rd day of March, 2021, by
RACHEL DARNELL, who is personally known to me or who has produced
_____ as identification.

SEAL

Catherine O. Shiflett
NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

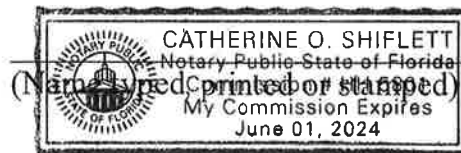


EXHIBIT "A"

Parcel ID: 27-36-09-00-758

5685 Lake Washington Road, Melbourne, Florida 32934

Legal Description:

A portion of those lands described in Official Records Book 1089, Page 773, as recorded in the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the intersection of the East line of Section 9, Township 27 South, Range 36 East and the South right of way of Lake Washington Road, as presently occupied; thence S.89°54'31"W., along said South right of way 549.29 feet to the Point of Beginning; thence continue S.89°54'31"W., 25.00 feet; thence S.00°23'12"E., parallel with the West line of the Southeast one-quarter of the Southeast one-quarter of Section 9, a distance of 1170.68 feet to the South line of Section 9; thence N.89°31'29"E., along the South line of Section 9, a distance of 345.00 feet; thence N.00°46'54"W., 633.45 feet **thence S.89°54'10"W., 315.64 feet; thence N.00°23'12"W., 535.00 feet to the Point of Beginning.**

JOINDER IN BINDING DEVELOPMENT PLAN BY MORTGAGEE CORPORATION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated November 17, 2017, given by Synovus Bank by merger with Florida Community Bank, NA, as mortgagor, in favor of the undersigned, Thomas Darnell and Rachel Darnell, as mortgagee, recorded in Official Records Book 8030, Page 327, of the Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

MORTGAGEE CORPORATION NAME AND ADDRESS

Synovus Bank

Mortgagee Corporation Name

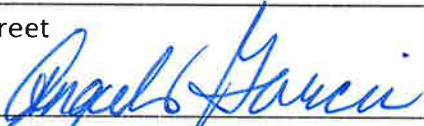
800 Shades Creek Pkwy MS 130 Birmingham AL 35209

Street

City

State

Zip Code



Angela Garcia, VP

*Authorized Agent Signature

Authorized Agent Printed Name and Title

*Note: All others besides CEO or President require attachment of original corporate resolution of authorization to sign documents of this type.

AFFIX CORPORATE SEAL

WITNESSES



Signature

Tamiko Washington

Print Name



Signature

Jonathan Morrison

Print Name

STATE OF ALABAMA

COUNTY OF Jefferson

The foregoing instrument was acknowledged before me this 23 day of Feb, 20 21

by Angela Garcia, who is personally known to me or who has produced

Driver's license as identification.

Rebecca Davis
Notary Public Signature

Rebecca Davis
Name Printed



LOCATION MAP

DARNELL, THOMAS R. AND RACHEL
20Z00037



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/16/2020

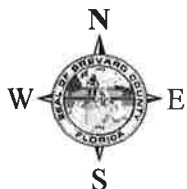
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Subject Property

ZONING MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/16/2020

- Subject Property
- Parcels
- Zoning

6. **Thomas R. and Rachel Darnell** (Kendall Moore) requests a change of zoning classification from SEU (Suburban Estate Use Residential) to AU (Agricultural Residential). The property is 5.45 acres, located on the south side of Lake Washington Rd., approx. 550 ft. west of McGraw Ave. (5685 Lake Washington Rd., Melbourne) (20Z00037) (Tax Account 2700779) (District 5)

Planning and Zoning Board Recommendation: Hodgers/Buchanan – Approved with a BDP (Binding Development Plan) prohibiting agritourism and agricultural-related packing, processing and sales of commodities raised on the premises. The vote was unanimous.

Board of County Commissioners Action: Zonka/Smith – **Approved as recommended, with a BDP prohibiting agritourism and agricultural-related packing, processing, and sales of commodities raised on the premises. The vote was unanimous. The BDP will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.**

7. **Harold Kurz, Trustee** (Harry Perrette) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from CC (Community Commercial) to PI (Planned Industrial). The property is 3.66 acres, located on the southwest intersection of N. Tropical Trail and N. Courtenay Parkway. (No assigned address. In the North Merritt Island area.) (20PZ00107) (Tax Account 2316254) (District 2) THIS ITEM WAS WITHDRAWN BY THE APPLICANT. LETTER RECEIVED JANUARY 11, 2021.

North Merritt Island Board Recommendation: Carbonneau/Lindhorst – Denied. The vote was unanimous.

8. **5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust** (Kim Rezanka) requests a change of zoning classification from RU-1-11 (Single-Family Residential), TR-2 (Single-Family Mobile Home), and BU-1 (General Retail Commercial) with a BDP (Binding Development Plan) to TR-1 (Single-Family Mobile Home) with a BDP limited to 200 units. The property is 58.04 +/- acres, located on the north side of Cedar Lake Dr., approx. 0.31 mile north of Broadway Blvd.; also located at the west end of Clearview Dr. (No assigned address. In the Cocoa area.) (20Z00036) (Tax Accounts 2310971, 2310861, and 2316173) (District 1)

Port St. John Board Recommendation: Messer/Chinaris – Tabled to the February 10, 2021, meeting. The vote was unanimous.

Planning and Zoning Board Recommendation: Glover/Buchanan – Tabled to the February 22, 2021, meeting. The vote was unanimous.

Board of County Commissioners Action: Lober/Zonka – Tabled to the March 4, 2021 meeting. The vote was unanimous.

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Lazy River Investments. Tobia/Lober. Denied with Finding of Facts.
- Item H.2. Brevard Tower Communications, Inc. Zonka/Smith. Adopted Ordinance No. 21-02, approving the 2020-2.1 Large Scale Comprehensive Plan Amendment changing the Future Land Use from RES 2 and NC to CC as recommended.
- Item H.3. Brevard Tower Communications, Inc. Zonka/Lober. Approved changing zoning classification from GU to BU-2 as recommended; and approved including a Binding Development Plan to provide 50-foot buffer of abutting residential property and maintaining the existing vegetative buffer, limiting the number of spaces and defining the access to boat and RV storage and ancillary services, committed to not having a dump station unless sewer is obtained, limiting the height of any lighting, providing a traffic study to ensure no adverse effect on the roadway, restricting for no overnight stays, and complying with applicable Florida Department of Environmental Protection requirements for building on a landfill.
- Item H.4. Ag Ventures. Lober/Smith. Approved with a Binding Development Plan limiting the density to four units per acre, preserving the wetlands in the northeast corner, connecting to water and sewer, and having a minimum of 10-acre area including wetland, buffer tracts, and stormwater tracts for consistency with the Res 4 Future Land Use designation in an RU-1-7 zoning classification.
- Item H.5. Marker 24 Marina, LLC. Lober/Smith. Approved a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-2 zoning classification, with condition of there being no speakers or other devices designed primarily to produce audible sounds with more than 55 decibels at the subject property line.
- Item H.6. Tammy McCoy. Lober/Smith. Approved changing zoning classification from AU to EU-1 as recommended.
- Item H.7. Thomas R. and Rachel Darnell. Zonka/Smith. Approved changing zoning classification from SEU to AU, with a Binding Development Plan limiting no agritourism uses and the processing of meat.
- Item H.8. Harold Kurz. Request withdrawn by applicant letter received on January 11, 2021.
- Item H.9. Harold Kurz. Request withdrawn by applicant letter received on January 11, 2021.
- Item H.10. 5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust. Lober/Zonka. Tabled to March 4, 2021.